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February 28, 2007

The Honorable Bob Lynn
State House of Representatives
State Capitol, Room 104
Juneau, Alaska 99801

Re: Constitutionality of HB 6, proposing to amend campaign contribution limits enacted by initiative

Dear Representative Lynn:

As you requested in correspondence dated February 16, 2007, we have reviewed the legislature's authority under the Alaska Constitution to amend a statute enacted by initiative. Specifically, you inquired about the constitutionality of a proposed committee substitute for House Bill 6 ("HB 6"), which would further limit campaign contributions from a group from the $1,000 maximum imposed by initiative to a $500 maximum.

We believe that a court probably would conclude that the legislature has the authority to make this change because the amendment would not invalidate or repeal the initiative and would effectuate the intent of the voters who passed the initiative.

The bill at issue, HB 6, would amend AS 15.13.040 and AS 15.13.070, which govern political contributions to state election campaigns. The bill is one of a package of ethics reform bills and, as proposed, would amend several statutory provisions. You requested only that we review the proposed amendment to AS 15.13.070(c), in Section 5 of Version K of the proposed committee substitute. This proposed amendment would reduce the limit for contributions made by a group that is not a political party to a candidate, group, nongroup entity, or political party from $1,000 to $500.

The $1,000 limit was imposed by a recent voter initiative. In the 2006 Primary Election, the voters approved Ballot Measure 1, which amended several statutes related to campaign contribution limits, lobbying, and disclosure. Entitled the "Take Our State Back" initiative by its supporters, it was an ethics reform proposal designed, in part, to provide greater limitations on campaign contributions. Among other changes, the initiative proposed to decrease the amount a group may give to a candidate or group from

$2,000 to $1,000. According to the initiative's authors, this change would limit "the amount of special interest influence in legislative campaigns," because "[t]he more special interests can contribute [to political campaigns], the more influence they have over our politicians." *See* Statement of Support, 2006 Primary Election Voter Pamphlet. The voters approved the amendments proposed in the initiative and the new laws became effective on December 17, 2006.

Under Article XI, Section 6, of the Alaska Constitution, a voter initiative cannot be repealed for two years, but may be amended at any time. The Alaska Supreme Court recognizes that this constitutional provision gives the legislature broad authority to amend laws enacted through the initiative process. *Warren v. Boucher,* 543 P.2d 731, 737 (Alaska 1975). The central issue in determining the permissible scope of legislative authority is "whether the legislature has exceeded that broad power by passing an amendment which so vitiates the initiative as to constitute its repeal." *Warren v. Thomas*, 568 P.2d 400, 402 (Alaska 1977)(quotation omitted).

The Court in *Warren v. Thomas* reviewed legislative amendments to a conflict of interest law that had been enacted by initiative. The legislative amendments had the effect of repealing certain portions of the law and reduced penalties for violation of the law. Nevertheless, the Court concluded that the amendments were acceptable because they did not "so emasculate the law that it is effectively repealed." *Thomas,* 568 P.2d at 403. In reaching this conclusion, the Court found that, although the fines for violations had been reduced, "the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure." *Id.*

In a more recent case, *State v. Trust the People*, 113 P.3d 613, 623 (Alaska 2005), the Court reaffirmed its holding in *Thomas*, noting that the Constitution gives the legislature broad powers to amend laws enacted by initiative but that such amendments must effectuate the intent of the electorate and cannot so vitiate an act passed by initiative as to constitute a repeal.

In applying the Court's analysis to this case, the proposed amendment appears to fall squarely within the legislature's amendment power. The proposed law promotes the same goals and common purpose as the initiative. They both seek to impose greater controls over campaign contributions and share the common purpose of campaign finance reform.

In determining voter intent, the Court looks at published arguments in support of an initiative. *Id.* at 622. The statement in support of Ballot Measure 1 in the voter pamphlet indicates that the initiative was proposed with the intent of limiting

contributions by "special interests" in legislative campaigns. To further that goal, the initiative amendments reduced the campaign contribution limits for individuals and groups.

The amendment proposed in HB 6 would not roll back or repeal this reduction, but would further restrict the campaign contribution limit for groups. If the amendment sought to raise the $1,000 limit imposed by the initiative, it might be considered a repeal. Because, however, it further reduces the cap on campaign contributions, it effectuates the intent of the electorate to impose more stringent limits on campaign financing.

Because in this case the proposed amendment promotes the intent and purposes of the initiative, we believe that a court likely would find that it is within the amendment authority of the legislature.

Sincerely,

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